

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil No. 12-2039 (FAB)

COMMONWEALTH OF PUERTO RICO, *et*
al.,

Defendants.

ORDER ON PROMOTIONS TO THE RANK OF SERGEANT

Having considered the position of the parties, the Court Monitor, and the Special Master at the January 19, 2023 status conference, and having been fully advised on the premises, the Court FINDS that:

1. The Commonwealth defendants established a Promotions Board in January 2022 to develop and administer a competitive written examination for promotions to the rank of sergeant as required by Paragraph 17 of the Agreement for the Sustainable Reform of the Puerto Rico Police Department ("Agreement"), Docket No. 60, to address the lack of first-line supervisors at the Puerto Rico Police Bureau (PRPB). The Commonwealth defendants identified the need for 506 new sergeants in their Updated Staffing Plan under Paragraph 13, dated October 31, 2022, to meet the staffing and supervision requirements of the Agreement.

2. On September 30, 2022, the PRPB Commissioner issued an updated version of General Order 500-504 to specify the authority and responsibilities of the Promotions Board and to guide the development of the sergeants examination. On the same date, September 30, 2022, the PRPB Commissioner issued Promotions Announcement #2022-2, notifying PRPB officers of the eligibility requirements for promotion to the rank of sergeant, the examination date and time, and other details about the promotion process. The announcement was the first significant promotions initiative undertaken by PRPB since 2015, when the last major round of promotions occurred to fill the ranks of first-line supervisors. During this time, in accordance with the Agreement, many changes have been made to update policies and procedures that depend on the availability, good judgment, and critical decision-making of sergeants for proper implementation.

3. Promotions Announcement #2022-2 set the examination date for December 17, 2022. Those candidates who were duly excused for verified reasons by the Promotions Board to take the examination on an alternate date, such as candidates on official duty outside of Puerto Rico or on military leave, were allowed to sit for the exam on another date. Promotions Announcement #2022-2 set the passing score at 70%, requiring that eligible candidates correctly answer 56 of the 80 questions on the examination. An informative

bulletin issued with Promotions Announcement #2022-2 outlined the subject-matter areas to be covered by the examination. One of the eligibility requirements listed in Promotions Announcement #2022-2 was that candidates receive 40 hours of supervisor training prior to performing their duties as sergeants, in accordance with Paragraph 141 of the Agreement.

4. By the close of the application period, October 21, 2022, PRPB received approximately 700 applications. Pursuant to approved policy, PRPB extended the application deadline to October 31, 2022. Ultimately, 1,701 candidates submitted applications, of which 1,627 candidates were deemed eligible for promotion by the Promotions Board.

5. The Promotions Board developed a question bank with approximately 183 questions covering approximately 62 subject areas for the sergeants examination, in consultation with an outside firm specializing in standardized testing. On December 2, 2022, two members of the Court Monitor's Office reviewed the questions developed by the Promotions Board and found that most questions were appropriate and related to the duties and responsibilities of PRPB sergeants. It made several recommendations to the Promotions Board, including avoiding questions that were not related to the core duties of sergeants (e.g. memorizing control numbers of PRPB forms), or that applied

to other ranks. Following the review by the Court Monitor's Office, the Promotions Board selected 80 questions for the final multiple-choice examination.

6. On December 17, 2022, the Promotions Board administered the sergeants examination at four testing sites: the Police Academy in Gurabo and three campuses of the Inter-American University in San Juan, Ponce, and Aguadilla. Of the 1,627 eligible candidates, 1,414 took the examination. The Promotions Board, members of the Court Monitor's Office, sworn PRPB personnel, and community groups were present at each of the testing sites to observe the test administration. The Court Monitor reported that the test administration was well-organized and executed appropriately.

7. Once the examinations were scored, the Promotions Board found that 184 candidates passed the examination with a score of 70%. On the day of the examination, however, the Promotions Board convened and reviewed Questions 8 and 62 after many candidates at each of the testing sites raised questions and concerns about those two questions. The Promotions Board determined that the questions lacked details that were necessary to answer correctly, and voted unanimously to adjudicate the questions and grant them to all candidates. The Promotions Board also found that 95% of the candidates incorrectly answered Question 8 and that 93% of

candidates incorrectly answered Question 62. Adjudicating and granting these two questions increased the number of candidates passing the examination with a score of 70% to 298.

8. On December 28, 2022, the Promotions Board met to review the overall test results, and to examine whether the questions administered on December 17 could be improved for use in future examinations. The review was also intended to identify confusing or ambiguous questions that could be adjudicated for the current examination. The Promotions Board agreed to review those questions that were answered incorrectly by at least 70% of the candidates. This approach yielded 13 questions for review in addition to Questions 8 and 62, which the Board had adjudicated on the date of the examination.

9. Based on its post-test review, the Promotions Board found flaws in four of the 13 questions reviewed - Questions 4, 7, 26, and 69. As a result, the Promotions Board agreed to recommend the adjudication of the four questions and grant credit to all candidates based on the following rationale:

- Question 4 (answered incorrectly by 91% of the candidates) - the question was not related to the core duties of sergeants because it tested the candidates' recall of PRPB form numbers.

- Question 7 (answered incorrectly by 76% of the candidates) - the question lacked details that are essential to answering it correctly.
- Question 26 (answered incorrectly by 73% of the candidates) - the question was not related to the core duties of sergeants because it tested the candidates' recall of PRPB form numbers.
- Question 69 (answered incorrectly by 97% of the candidates) - the answers included confusing language that made it possible for more than one answer to be correct.

10. Following instructions from the Court, the Court Monitor reviewed the scoring decisions and recommendations of the Promotions Board. On January 5, 2023, the Monitor requested specific documents and information to supplement earlier productions by the Commonwealth, including a copy of the six questions adjudicated by the Promotions Board. In a memorandum dated January 11, 2023, the Monitor concluded that the Promotions Board complied with approved PRPB policy and the consent decree. The Monitor also concluded that the Promotions Board's decision to adjudicate Questions 8 and 62 on the date of the examination and subsequent recommendation to adjudicate Questions 4, 7, 26, and 69 were justified and appropriate. The United States and the Special

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Master had access to the materials reviewed by the Monitor and concurred with the Monitor's conclusions.

11. The Commonwealth defendants reported that 562 candidates passed the sergeants examination with a score of at least 70% once credit was granted for the six questions adjudicated by the Promotions Board.

12. During the week of January 16, 2023, the Court Monitor's Office reviewed the updated training curriculum developed by the PRPB Training Academy, and on January 20, 2023, submitted comments and feedback to PRPB. PRPB addressed the Court Monitor's comments and began providing supervisor training to the first group of eligible candidates who passed the sergeants examination on January 23, 2023.

Accordingly, the Court APPROVES the adjudication of Questions 4, 7, 8, 26, 62 and 69 and GRANTS credit for those questions to those candidates who took the December 17, 2022 sergeants examination, as recommended by the Promotions Board, and agreed upon by the Parties, the Court Monitor, and the Special Master.

It is further ORDERED that the Commonwealth defendants take the following steps to proceed with the promotions process:

1. The Promotions Board shall complete the final scoring of the sergeants examination and other qualifying factors, including

training, educational achievement, experience, and veteran's preference, in accordance with Promotions Announcement #2022-2, approved PRPB policy and the consent decree. The Promotions Board shall grant credit only for Questions 4, 7, 8, 26, 62 and 69, as applicable, to all candidates who took the December 17, 2022, sergeants examination, applying the established passing score of 70%. The Promotions Board shall also proceed to select an alternate examination to those eligible candidates who were duly excused from taking the examination on December 17, 2022, drawing from questions in the questions bank that were developed by the Promotions Board and reviewed by the Court Monitor's Office, but not including any of the 80 questions contained in the December 17 examination.

2. Once all necessary scoring is complete, the Promotions Board shall produce and publish a final eligibility list ranked in order from highest to lowest.

3. PRPB shall continue providing supervisor training to all eligible candidates who passed the sergeants examination using the curriculum reviewed by the Court Monitor's Office, and shall apply the results of the post-training tests to the final scores of all eligible candidates.

4. As suggested by the Court Monitor following the January 19, 2023, status conference, PRPB shall develop and

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implement a job aide or toolkit within 60 days of the date of this Order to assist new sergeants in carrying out essential duties and responsibilities in the field to include the following topics: responding to critical incidents, documenting and reviewing use of force, handling civilian complaints, responding to allegations of sexual harassment and employee misconduct, responding to domestic violence and sexual assault, and referring officers to employee assistance programs and services. The Court Monitor's Office and the United States shall review and approve the job aide or toolkit in accordance with Paragraph 229 of the Agreement before the job aide or toolkit is disseminated to PRPB sergeants and implemented.

IT IS SO ORDERED.

San Juan, Puerto Rico, January 27, 2023.

s/ Francisco A. Besosa

FRANCISCO A. BESOSA

SENIOR UNITED STATES DISTRICT JUDGE